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DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL SCIENCES

1244085 - R8 SDMS



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March 13, 1989

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301 S. Park, Drawer 10096  
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Site East Helena  
File # 2.17.08.02 1.17.08.02  
Confidential: Yes ☐ No ☒  
Admin. Record: Yes ☒ No ☐  
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AGENCY

MAR 23 1989

MONTANA OFFICE

Dear Eric,

This letter constitutes a request from our office for a written legal opinion from Region VIII Counsel. We are asking for an opinion, to which our legal staff could concur, that the hazardous waste program could defer onsite regulation of KO65 wastes during remedial activities under CERCLA.

Effective March 13, 1989, EPA has relisted hazardous waste KO65, surface impoundment solids at primary lead smelting facilities (see Federal Register Vol. 53, No. 177, 9/13/88). Our state hazardous waste program anticipates adopting equivalent regulations by June 30, 1990. The Asarco lead smelter in East Helena, Montana, has a number of surface impoundments that contain KO65 wastes. It is also an NPL site, and is currently conducting a PRP-financed CERCLA RI/FS.

Our state hazardous waste program does not want to see the remediation process at the East Helena site complicated by dual RCRA-CERCLA authorities. However, we remain concerned that in recent years EPA has tended to defer to RCRA authorities, at those sites where both RCRA and CERCLA authorities may exist. A legal opinion from EPA on this subject could help to allay any concerns.

Sincerely,

*Roger Thorvilson*

Roger Thorvilson  
Hazardous Waste Section